

JOHN RUSINIAK

IBLA 73-215

Decided March 5, 1973

Appeal from a decision of the Bureau of Land Management, Utah State Office, denying appellant's petition for reinstatement of oil and gas lease U 0133560-F, terminated by operation of law for failure to pay the advance rental on or prior to the anniversary date.

Reversed.

Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Failure to timely pay the advance rental on an oil and gas lease will be deemed "justifiable" where the failure is the result of sufficiently extenuating circumstances which affected the lessee's actions.

APPEARANCES: Frances Kozlowski for appellant.

OPINION BY MR. HENRIQUES

Frances Kozlowski appeals on behalf of her uncle, John Rusiniak, from a decision of the Utah State Office, Bureau of Land Management, dated November 22, 1972, denying reinstatement of his oil and gas lease U 0133560-F, terminated by operation of law for failure to pay on or prior to the anniversary date the required advance rentals. Under section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188, advance rental payment for the lease must be received on or prior to the anniversary date of the lease or the lease terminates. In the instant case, payment was due on or prior to Thursday, April 1, 1971. Payment was not received until Monday, April 5, 1971. Thus, the lease terminated by operation of law. Under the provisions of the Act of May 12, 1970, 84 Stat. 206, the lease may be reinstated provided the lessee pays or tenders the rental within 20 days after the anniversary date, and petitions for reinstatement and shows that the failure to timely pay was either justifiable or not due to a lack of reasonable diligence. The envelope containing the payment was postmarked on March 31, 1971, in East Orange, New Jersey. It was due the next day in Salt Lake City, Utah. Thus, it cannot be said that reasonable diligence was exercised, see Louis Samuel, et al., 8 IBLA 268 (1972); 43 CFR 3108.2-1(c)(2) (1972); and the State Office correctly so held.

The State Office, however, did not examine the question of whether the failure to timely pay was "justifiable." A reading of the State Office decision clearly shows that it was believed that the Act of May 12, 1970, supra, provided only one ground for reinstatement. Subsequent to the decision rendered by the State Office, this Board in Louis Samuel, et al., supra, examined the Act of May 12, 1970, supra, and rejected the position that "justifiable" and "not due to a lack of reasonable diligence" were merely restatements of the same principle. Rather, we held that independent of a showing of reasonable diligence, a petition for reinstatement may be granted if it is shown that the failure to timely pay was the result of sufficiently extenuating circumstances which affected the lessee's actions. See Louis Samuel, et al., supra; R. G. Price, et al., 8 IBLA 290 (1972).

In the case at bar the appellant has been hospitalized for nine years at the Veterans Hospital in Lyons, New Jersey. During most of this time he was permitted to return home on weekends, at which time he took care of his correspondence. It is noted that appellant acquired the lease by assignment effected April 1, 1964, and that all payments until 1971 were timely made. In 1971, as result of a worsening condition plus the complications of pneumonia, such visits at home were precluded. Appellant's niece, Frances Kozlowski, who is prosecuting the appeal in his behalf, attempted to handle his personal business for him during this period. Because she was unfamiliar with the requirement of timely receipt, payment of the advance rental was not timely made. Considering all the circumstances of this case we find that the failure of the appellant to timely pay in the advance rental was justifiable and accordingly we grant reinstatement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Douglas E. Henriques, Member

We concur:

Newton Frishberg, Chairman

Joseph W. Goss, Member.

